

**TITLE 327 WATER POLLUTION CONTROL
BOARD**

**Proposed Rule
LSA Document #92-62
DIGEST**

Adds 327 IAC 15 concerning the general NPDES permit program. Effective 30 days after filing with the secretary of state.

327 IAC 15

SECTION 1. 327 IAC 15 IS ADDED TO READ AS FOLLOWS:

ARTICLE 15. GENERAL NPDES PERMIT PROGRAM

Rule 1. General Provisions

327 IAC 15-1-1 Purpose

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1
Affected: IC 13-1-3; IC 13-7

Sec. 1. The purpose of this article is to establish general NPDES permits for certain classes or categories of point source discharges by prescribing the policies, procedures, and technical criteria to apply for and receive authorization to operate and discharge under the requirements of a general NPDES permit. General permit authorization is an option to individual NPDES permits issued under 327 IAC 5. A facility can operate under an individual NPDES permit and one (1) or more general permits. (*Water Pollution Control Board; 327 IAC 15-1-1*)

327 IAC 15-1-2 Definitions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1
Affected: IC 13-1-3-1.5; IC 13-7-1

Sec. 2. In addition to the definitions contained in IC 13-7-1, IC 13-1-3-1.5, 327 IAC 1, and 327 IAC 5, as amended, the following definitions apply throughout this article:

- (1) "Existing discharge" means any point source discharge of process or storm water which occurs either continuously or intermittently from a property at the time coverage under an NPDES permit is being sought.
- (2) "General permit boundary" means an area based upon existing geographic or political boundaries indicating the area within which a facility seeking coverage under a general permit must be located.
- (3) "Individual NPDES permit" means a NPDES permit issued to one (1) facility which contains requirements specific to that facility.
- (4) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit which includes information as required under 327 IAC 15-3 and the applicable general permit.
- (5) "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(*Water Pollution Control Board; 327 IAC 15-1-2*)

327 IAC 15-1-3 Department request for data

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1
Affected: IC 13-1-3; IC 13-7

Sec. 3. (a) Whenever necessary to carry out the provisions of this article, any person who is, or may be reasonably expected to be, subject to such regulatory provisions shall:

- (1) establish and maintain such records;

(2) make such reports;
(3) install, use, and maintain such monitoring equipment or methods (including, where appropriate, biomonitoring methods);
(4) sample such effluents, internal wastestreams where appropriate, or other material; and
(5) provide such other data, including, but not limited to, raw materials, catalysts, intermediate products, byproducts, production rates, and related process information; at such locations, at such times, and in such a manner, as the commissioner may reasonably prescribe.

(b) Sampling of internal wastestreams under subsection (a)(4) and the provisions of data under subsection (a)(5) shall not be required by the commissioner unless:

(1) such data are reasonably expected to facilitate the identification or quantification of pollutants which may be released to the environment from facilities operated by the person to whom the request is made, and the identification or quantification of such pollutants could not reasonably be made by the commissioner in the absence of the requested information; or

(2) such data are necessary to properly control wastewater treatment processes.

(Water Pollution Control Board; 327 IAC 15-1-3)

327 IAC 15-1-4 Enforcement

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 4. This article shall be enforced through the provisions of IC 13-7-10-5, IC 13-7-11, or IC 13-7-12, or any combination thereof, as appropriate. Penalties for violation of this article shall be governed by IC 13-7-13, as amended. (Water Pollution Control Board; 327 IAC 15-1-4)

Rule 2. Basic General NPDES Permit Requirements

327 IAC 15-2-1 Purpose and scope

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 1. This rule defines the basic programmatic requirements of the general permit program to be administered by the commissioner consistent with NPDES requirements under sections 318, 402, and 405 of the CWA and 327 IAC 5. (Water Pollution Control Board; 327 IAC 15-2-1)

327 IAC 15-2-2 General NPDES permit development requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 2. (a) The commissioner may regulate the following discharges under general NPDES permits:

(1) Point source discharges of storm water associated with industrial activity as defined in 40 CFR 122.26(b)(14) as published in the Federal Register on November 16, 1990.

(2) Such other categories of point sources for which there are a number of point sources operating within the state that:

(A) involve the same or substantially similar types of operations;

(B) discharge the same types of wastes;

(C) require the same effluent limitations or operating conditions; and

(D) require the same or similar monitoring requirements.

(b) The commissioner or the discharger may determine that an individual permit is more appropriate than a general permit for a particular discharge.

(c) Each general permit shall be applicable to a class or category of dischargers meeting the criteria of subsection (a) existing within specific boundaries designated by the

commissioner in accordance with the following:

(1) A general permit boundary shall correspond with existing geographic or political boundaries such as:

- (A) designated planning areas under sections 208 and 303 of the CWA;
- (B) regional sewer districts or sewer authorities;
- (C) city, county, or state political boundaries;
- (D) state highway systems;
- (E) standard metropolitan statistical areas as defined by the federal Office of Management and Budget;
- (F) urbanized areas as defined by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or
- (G) any other appropriate divisions or combinations of the boundaries in this subdivision which will encompass the sources subject to the general permit.

(2) Any designation of any general permit boundary is subject to review by the commissioner:

- (A) upon revision of a general permit;
- (B) if individual permits have been issued to all persons in a category of point sources; or
- (C) as necessary to address water quality problems effectively.

(Water Pollution Control Board; 327 IAC 15-2-2)

327 IAC 15-2-3 General NPDES permit applicability requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 3. (a) A general permit may cover all designated categories of point sources for which a general permit exists, except:

- (1) as provided under section 6 or 9 of this rule or the applicable general permit; and
- (2) point source discharges meeting the applicability requirements of a general permit, who are already subject to individual NPDES permits prior to the effective date of a general permit.

(b) Sources excluded from general permit coverage solely because they have an existing individual NPDES permit may request coverage under a general permit and may request that the individual NPDES permit be revoked or modified to remove the point source from the existing permit to be covered by a general permit. Upon revocation or expiration of the individual NPDES permit and commencement of coverage under the general permit, the general permit shall apply to such point source discharges.

~~(c) A general permit may be used by a facility with an individual NPDES permit if the conditions of the individual permit do not address the circumstances covered by the general permit. A facility that holds an individual NPDES permit may seek to cover eligible discharges under an applicable general permit if such discharges are not addressed in the individual permit.~~ *(Water Pollution Control Board; 327 IAC 15-2-3)*

327 IAC 15-2-4 Administrative requirement for general NPDES permit coverage

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 4. A general permit is, in essence, a permit-by-rule. Therefore, the statutory requirements for administrative agency rulemaking must be satisfied in the development of a general permit. *(Water Pollution Control Board; 327 IAC 15-2-4)*

327 IAC 15-2-5 Notice of intent for coverage by a general NPDES permit

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 5. (a) Any person interested in coverage for a point source discharge by a general

NPDES permit and meets all of the applicability criteria may submit a NOI letter to the commissioner under this section, 327 IAC 15-3, and any additional requirements set forth in the applicable general permit.

(b) A NOI letter for a general permit shall be submitted to the commissioner by the time specified under 327 IAC 15-3 or otherwise indicated in the applicable general permit.

(c) The person operating the facility or operation from which a point source discharge of pollutants and/or storm water occurs is responsible for submitting a NOI letter if coverage of the discharge under a general permit is being sought and, if denied, applying for and obtaining an individual NPDES permit. *(Water Pollution Control Board; 327 IAC 15-2-5)*

327 IAC 15-2-6 Exclusions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 6. The following discharges cannot be covered by a general NPDES permit and must be authorized by an individual NPDES permit issued under 327 IAC 5:

(1) A discharge to a receiving stream identified as an outstanding state resource water as defined under 327 IAC 2-1-1(e) ~~2(3)~~ or which would lower the water quality of an outstanding state resource water downstream of the point source discharge.

(2) A discharge to a receiving stream identified as an exceptional use resource water as defined under 327 IAC 2-1-11(b) or which would lower the water quality of an exceptional use resource water downstream of the point source discharge.

(Water Pollution Control Board; 327 IAC 15-2-6)

327 IAC 15-2-7 Effect of issuance of general permit

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 7. (a) Compliance with a general permit during its term constitutes compliance with all applicable standards and limitations of the CWA and state law, except for any standards or prohibition imposed under section 307 of the CWA for a toxic pollutant injurious to human health.

(b) The issuance of a general permit does not:

(1) convey any property rights of any sort or any exclusive privileges;

(2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or

(3) preempt any duty to obtain state or local assent required by law for the discharge or for construction or operation of the facility from which the discharge is made.

(Water Pollution Control Board; 327 IAC 15-2-7)

327 IAC 15-2-8 Duration of general NPDES permits and transferability requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 4-22-2; IC 13-1-3; IC 13-7

Sec. 8. (a) A general permit shall be reviewed for consistency with the CWA, 327 IAC 2, and 327 IAC 5 upon their revision. If general permit revision is necessary, a general permit must be modified in accordance with IC 13-7 and IC 4-22-2.

(b) Coverage of a point source discharge under a general permit shall be authorized for a term not to exceed five (5) years. Coverage of less than five (5) years duration may be granted in appropriate circumstances at the discretion of the commissioner. In no event may the term of coverage be extended beyond five (5) years from the original approval date.

(c) Coverage may not be transferred to another person. If ownership/operation of a facility is transferred to a new person, that person must submit a NOI letter pursuant to 327

IAC 15-3 or seek coverage under an individual NPDES permit pursuant to 327 IAC 5.

(d) A discharger who filed a NOI letter for coverage under a general permit and who subsequently was requested by the commissioner to file an application for an individual NPDES permit has one hundred twenty (120) days from the time of the request by the commissioner to file the application. (*Water Pollution Control Board; 327 IAC 15-2-8*)

327 IAC 15-2-9 Special general NPDES permit coverage requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 9. (a) If modification of a general permit is issued under section 8 of this rule, all persons covered by the affected general permit must be notified by certified mail of the modification by the commissioner within sixty (60) days after the effective date of the modified permit. The person must notify the commissioner within ninety (90) days after the effective date of the modified permit of its intent to comply or not with the terms of the modified permit. If the intent of the person is not to comply with the modified permit, the person must:

- (1) apply for an individual NPDES permit under 327 IAC 5-3 within one hundred twenty (120) days after the effective date of the modified permit; or
- (2) submit a NOI letter for coverage under an alternative general permit within ninety (90) days after the effective date of the modified permit.

(b) The commissioner may require any person authorized to discharge under a general permit to apply for and obtain an individual NPDES permit if one (1) of the five (5) cases listed in this subsection occurs. Interested persons may petition the commissioner to take action under this subsection. Cases where individual NPDES permits may be required include the following:

- (1) The discharge is determined to be a significant contributor of pollution, such as **bioaccumulative chemicals of concern**.
- (2) The discharger is not in compliance with the terms and conditions of the general permit.
- (3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the point source.
- (4) Effluent limitations guidelines that are more stringent than the requirements in the general permit are subsequently promulgated for point sources covered by the general permit.
- (5) A water quality management plan containing more stringent requirements applicable to such point source is approved.
- (6) **Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.**

(c) If the commissioner requires a person authorized to discharge under a general permit to apply for an individual NPDES permit, pursuant to 327 IAC 5-3, the commissioner shall notify the person in writing that a permit application is required. This notice shall include the following:

- (1) A brief statement of the reasons for this decision.
- (2) An application form.
- (3) A statement setting a time for the person to file the application.
- (4) A statement that on the effective date of the individual NPDES permit, the general permit, as it applies to the individual person, shall automatically terminate.

The commissioner may grant additional time upon request of the applicant for completion of the application.

~~(d) If a person operating an existing~~ **An operator of a storm water discharge that meets meeting the applicability requirements of the storm-water general permit and is not covered by an existing individual NPDES permit, chooses NPDES coverage for that discharge under an**

~~individual permit, the person shall~~ must submit an application under 40 CFR 122.26 as published in the Federal Register on November 16, 1990, and 327 IAC 5-3 if the operator seeks to cover the discharge under an individual permit.

(e) Where an individual NPDES permit is issued to a person with approval to discharge under a general permit, the general permit, as it applies to the individual NPDES permittee, is automatically revoked on the effective date of the individual permit.

(f) Persons with a discharge meeting all the applicability criteria of more than one (1) general permit may be authorized to discharge in accordance with all effluent limitations, monitoring requirements, and other conditions of each applicable general permit, where appropriate. *(Water Pollution Control Board; 327 IAC 15-2-9)*

327 IAC 15-2-10 Prohibitions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 10. No general permit shall be promulgated and issued where the terms and conditions of the permit do not comply with the applicable guidelines and requirements of the CWA or effective regulations promulgated under the CWA, 327 IAC 2, 327 IAC 5, or this article. *(Water Pollution Control Board; 327 IAC 15-2-10)*

Rule 3. NOI Letter Requirements

327 IAC 15-3-1 Purpose

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 1. The purpose of this rule is to establish the requirements and procedures for submitting a NOI letter and obtaining approval for coverage under a general permit. The NOI letter shall be sent to the following address:

Indiana Department of Environmental Management

Office of Water Management

105 South Meridian Street

P.O. Box 6015

Indianapolis, Indiana 46204

Attention: Permits Section, General Permit Desk

(Water Pollution Control Board; 327 IAC 15-3-1)

327 IAC 15-3-2 Content requirements of a NOI letter

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 2. The NOI letter shall include, at a minimum, the following:

(1) Name, mailing address, and location of the facility for which the notification is submitted.

(2) SIC codes, up to four (4) digits, that best represent the principal products or activities provided by the facility.

(3) The person's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(4) The latitude and longitude of the approximate center of the facility to the nearest fifteen (15) seconds, or the nearest quarter section (if the section, township, and range is provided) in which the facility is located.

(5) The name and receiving water, or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.

(6) A description of how the facility complies with the applicability requirements of the general permit for which coverage is being sought.

- (7) Any additional NOI letter information required by the applicable general permit.
(8) **The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g).**

(Water Pollution Control Board; 327 IAC 15-3-2)

327 IAC 15-3-3 Deadline for submittal of a NOI letter; additional requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 3. (a) Any person proposing a new discharge seeking coverage under a general permit, except for construction, shall submit a NOI letter and additional information as required by the applicable general permit at least one hundred eighty (180) days before the date on which the discharge is to commence, unless permission for a later date has been granted by the commissioner or is established in the applicable general permit. A construction activity NOI letter shall be submitted in accordance with 327 IAC 15-5-6.

(b) Any person seeking coverage under a general permit with an existing discharge shall submit a NOI letter within ninety (90) days of the effective date of the applicable general permit, unless permission for a later date has been granted by the commissioner or is established in the applicable general permit. *(Water Pollution Control Board; 327 IAC 15-3-3)*

327 IAC 15-3-4 Procedures for coverage under a general permit

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 4. Except as provided for in the applicable general permit, the following apply:

(1) A person with an existing NPDES permit shall be covered by the requested general permit upon submittal of a NOI letter that contains the information required under section 2 of this rule and the NOI letter requirements in the applicable general permit.

(2) A person with a new facility requesting a general permit will be covered by that general permit upon submittal of a NOI letter that contains the information required under section 2 of this rule and the NOI letter requirements in the applicable general permit.

(3) A person requesting renewal of a general permit will be covered by that general permit upon submittal of a NOI letter that contains the information required under section 2 of this rule and the NOI letter requirements in the applicable general permit.

(Water Pollution Control Board; 327 IAC 15-3-4)

Rule 4. Standard Conditions for General NPDES Permits

327 IAC 15-4-1 General conditions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-1-6; IC 13-7

Sec. 1. (a) The conditions in this section apply to all general NPDES permits and shall be incorporated into each general permit.

(b) The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the CWA and the Indiana Environmental Management Act and is grounds for enforcement action, approval termination, revocation and reapproval, or denial of a request for renewal of a general permit approval.

(c) Under the Indiana Environmental Management Act, any person who violates a permit condition implementing section 301, 302, 306, 307, 318, or 405 of the CWA is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of such violation. Any person who willfully or negligently violates permit conditions implementing section 301, 302, 306, 307, or 308 of the CWA is subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) per day of violation, or

by imprisonment for not more than one (1) year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment for not more than two (2) years, or both. Except as provided in permit conditions on bypassing under section 2(b)(2) of this rule, and upsets under section 2(c)(2) of this rule, nothing in the permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

(d) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(e) Coverage under a general permit may be revoked and reauthorized, or terminated for cause, including, but not limited to, the following:

(1) Violation of any terms or conditions of the permit.

(2) Obtaining the coverage by misrepresentation or failure to disclose fully all relevant facts.

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

The filing of a request by the permittee for revocation and reauthorization or termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(f) The permittee shall furnish to the commissioner, within a reasonable time, any information which the commissioner may request to determine whether cause exists for revoking and reapproving or terminating the approval or to determine compliance with the permit. The permittee shall also furnish to the commissioner, upon request, copies of records required to be kept by this permit.

(g) If the permittee wishes to continue an activity regulated by the permit after the five (5) year period of authorization, the permittee must submit a new NOI letter. The NOI letter should be submitted at least one hundred eighty (180) days prior to the end of coverage. The commissioner may grant permission to submit a NOI letter less than one hundred eighty (180) days in advance, but no later than the end of the five (5) year authorization.

(h) Coverage under a general permit is nontransferable to any person. The commissioner shall require submittal of a NOI letter from the new person in order to change the name of the permittee.

(i) Notwithstanding subsection (e), if a toxic effluent standard, prohibition, or sediment, wet weather, or biological criteria (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the CWA for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in the permit, the permit shall be modified to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants injurious to human health within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(j) When cyanide or cyanogen compounds are used in any of the processes at a facility, the permittee shall provide approved facilities for the containment of any losses of these compounds in accordance with the requirements under 327 IAC 2-2-1.

(k) The permittee shall have all wastewater treatment facilities, if any, under the direct supervision of an operator certified by the commissioner as required under IC 13-1-6 and 327 IAC 8-12.

(l) Nothing in the permit shall be construed to relieve the permittee from any

responsibility, liability, or penalty to which the permittee is or may be subject to under section 311 of the CWA.

(m) The issuance of the permit does not convey any property rights of any sort or any exclusive privileges.

(n) The provisions of the permit are severable and, if any provision of the permit or the application of any provision of the permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of the permit shall not be affected thereby.

(o) The permittee shall allow the commissioner, or an authorized representative, (including an authorized contractor or representative of another governmental agency acting as a representative on behalf of the commissioner), at reasonable times, and in a manner to minimize disruption of the permittee's business, upon the presentation of credentials and such other documents as may be required by law, to:

(1) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(2) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(4) sample or monitor, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

(p) The permittee shall not construct, install, or modify any water pollution control facility without a valid construction permit issued by the Indiana department of environmental management under 327 IAC 3-2. (*Water Pollution Control Board; 327 IAC 15-4-1*)

327 IAC 15-4-2 Management requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 2. (a) The permittee shall, at all times, maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee and which are necessary for achieving compliance with the terms and conditions of the permit.

(b) The following definitions, with regard to bypass of treatment facilities, apply throughout this rule:

(1) "Bypass" means the intentional diversion of a wastestream from any portion of a treatment facility normally utilized for treatment of the wastestream.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production at the permittee's facility.

(c) Bypass which causes, or is likely to cause, applicable effluent limitations to be exceeded is prohibited unless the following conditions are met:

(1) Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage.

(2) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal period of equipment downtime.

(3) The permittee submits notice of an unanticipated bypass to the commissioner within twenty-four (24) hours of becoming aware of the bypass. (If this information is provided orally, a written submission must be provided within five (5) days.) Where the

permittee knows, or should have known, in advance of the need for a bypass, this prior notification shall be submitted for approval to the commissioner, if possible, at least ten (10) days before the date of the bypass.

An anticipated bypass which meets the criteria under this subsection may be allowed under conditions determined to be necessary by the commissioner to minimize any adverse effects.

(d) With regard to upset conditions, as used in this rule, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by any of the following:

- (1) Operational error.
- (2) Improperly designed treatment facilities.
- (3) Inadequate treatment facilities.
- (4) Lack of preventive maintenance.
- (5) Careless or improper operation.

(e) An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements under subsection (d) are met.

(f) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, the following:

- (1) An upset occurred and the permittee has identified the specific cause of the upset, if possible.
- (2) The permitted facility was, at the time being operated, in compliance with proper operation and maintenance procedures.
- (3) The permittee complied with any remedial measures required under section 1(d) of this rule.

(g) Solids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters and to be in compliance with all Indiana statutes and rules relative to liquid and/or solid waste disposal. (*Water Pollution Control Board; 327 IAC 15-4-2*)

327 IAC 15-4-3 Reporting requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7-13-3; IC 35-50-3-3

Sec. 3. (a) Any change in the information submitted in the NOI letter should be reported as soon as practicable to the commissioner. Changes which are reasonably expected to alter the characteristics of the discharge covered by the general permit must be reported prior to the change. Following such notice, the commissioner may request the discharger to submit an application for an individual NPDES permit.

(b) Monitoring results shall be reported at the intervals and in the form specified in the appropriate general permit.

(c) The following are requirements for twenty-four (24) hour reporting:

(1) The permittee shall orally report information to the enforcement section, operations branch, on the following types of noncompliance within twenty-four (24) hours from the time the permittee becomes aware of such noncompliance:

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Violation of a maximum daily discharge limitation for any of the pollutants listed by the commissioner in the permit to be reported within twenty-four (24) hours.

(C) Any noncompliance which may pose a significant danger to human health or the environment.

(2) A written submission shall also be provided to the enforcement section within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain the following:

(A) A description of the noncompliance and its cause.

(B) The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue.

(C) Steps taken or planned to reduce and eliminate the noncompliance and prevent its recurrence.

The commissioner may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(d) The permittee shall report any instance of noncompliance not reported under subsection (c) at the time the pertinent discharge monitoring report is submitted. The report shall contain the information specified under subsection (c)(2).

(e) Where the permittee becomes aware that he failed to submit any relevant facts, or submitted incorrect information in a NOI letter, or in any report to the commissioner, the permittee shall promptly submit such facts or corrected information.

(f) The permittee shall notify the commissioner as soon as it knows, or has reason to believe, the following:

(1) That any activity has occurred, or will occur, which would result in the discharge of any pollutant identified as toxic, under section 307(a) of the CWA which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(A) One hundred (100) micrograms per liter.

(B) Two hundred (200) micrograms per liter for acrolein and acrylonitrile; five hundred (500) micrograms per liter for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter for antimony.

(C) A level established elsewhere in the permit by the commissioner.

(2) That it has begun, or expects to begin, to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

(g) Signatory requirements shall be as follows:

(1) All reports required by the permit and other information requested by the commissioner shall be signed by a person described as follows, or by a duly authorized representative of that person:

(A) For a corporation, by a responsible corporate officer. As used in this section, "responsible corporate officer" means:

(i) a president, secretary, treasurer, any vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or

(ii) the manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(B) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

(C) For a municipality, state, federal, or other public agency or political subdivision thereof, by either a principal executive officer or ranking elected official.

(2) A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described under subdivision (1);

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(C) the written authorization is submitted to the commissioner.

(3) Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(h) Except for data determined to be confidential under 327 IAC 12, all reports prepared in accordance with the terms of the permit shall be available for public inspection at the offices of the Indiana department of environmental management and the U.S. Environmental Protection Agency Regional Administrator. As required by the CWA, permit applications, permits, and effluent data shall not be considered confidential.

(i) The Indiana Environmental Management Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than six (6) months per violation, or by both. The CWA, as well as IC 13-7-13-3 and IC 35-50-3-3, provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both. (*Water Pollution Control Board; 327 IAC 15-4-3*)